



## **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Occupational Safety and Health Review Commission (OSHRC) is providing notice of a new Privacy Act system of records, designated as Reasonable Accommodation Records, OSHRC-9.

**DATES:** Comments must be received by OSHRC on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The new system of records will become effective on that date, without any further notice in the *Federal Register*, unless comments or government approval procedures necessitate otherwise.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov). Include “PRIVACY ACT SYSTEM OF RECORDS” in the subject line of the message.
- Fax: (202) 606-5417.
- Mail: One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.
- Hand Delivery/Courier: same as mailing address.

*Instructions:* All submissions must include your name, return address, and e-mail address, if applicable. Please clearly label submissions as “PRIVACY ACT SYSTEM OF RECORDS.”

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor,

Office of the General Counsel, via telephone at (202) 606-5410, or via e-mail at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the *Federal Register* notice of any new or modified system of records.

In accordance Executive Order 14043, “Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees” (Sept. 9, 2021), each agency is required to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law.” The Safer Federal Workforce Task Force—created by the president to provide federal agencies with guidance on issues related to the COVID-19 pandemic—subsequently issued guidance regarding reasonable accommodation requests, for both medical and religious reasons, that may constitute “legally required exception[s] to the vaccination requirement.” More specifically, under certain circumstances, federal law—such as section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*—may require an agency to provide a reasonable accommodation for an employee or applicant who, because of a disability or a sincerely held religious belief, practice, or observance, requests and is granted an exception from the COVID-19 vaccine mandate.

In the event that an employee or applicant requests a reasonable accommodation, records supporting that request may be collected and maintained by the agency, in accordance with 29 CFR part 1614. The agency may also collect and maintain records concerning requests for reasonable accommodations made in other circumstances that are unrelated to the vaccine mandate set forth in Executive Order 14043.

The notice for OSHRC-9, provided below in its entirety, is as follows.

**SYSTEM NAME AND NUMBER:** Reasonable Accommodation Records.

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** The Office of the Executive Director maintains the records in this system. The office is located at 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457.

**SYSTEM MANAGER(S):** Human Resources Specialist, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457; (202) 606-5100.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; 29 CFR part 1614; E.O. 13548; E.O. 13164.

**PURPOSE(S) OF THE SYSTEM:** This system is maintained for the purpose of considering, deciding, and implementing requests for reasonable accommodations made by OSHRC employees and applicants.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** This system of records covers current and former OSHRC employees and applicants who have requested reasonable accommodations.

**CATEGORIES OF RECORDS IN THE SYSTEM:** This system of records may include the employee's or applicant's name; contact information, including mailing and email addresses, and phone numbers; employment information; information concerning disabilities, including descriptions of disabilities and how they affect major life activities, medical records, and medical opinions; and information concerning religious beliefs, practices and observances.

**RECORD SOURCE CATEGORIES:** Information contained in the system is obtained from OSHRC employees and applicants requesting reasonable accommodations, as well as their medical providers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to

disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected, and to the extent disclosure of any medical and/or genetic information is in compliance with Section 501 of the Rehabilitation Act of 1973 and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008. With respect to medical and genetic information protected under the Rehabilitation Act and/or GINA, records will be withheld or redacted to comply with the specific confidentiality and disclosure requirements set forth by the U.S. Equal Employment Opportunity Commission at 29 CFR part 1630 (Rehabilitation Act) and 29 CFR part 1635 (GINA). With these limitations, records may be disclosed as a routine use:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil,

criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To a federal, state, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of federal personnel management.

(7) To officers and employees of a federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A-

19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another federal agency or federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) To medical professionals, when the requester has signed a limited release,

authorizing OSHRC to seek additional information directly from the medical provider, or when OSHRC has determined that medical information must be reviewed by other medical experts to make a reasonable accommodation determination.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Records are stored on paper in locked file cabinets at OSHRC's National Office in Washington, D.C., and electronically on an access-restricted shared OSHRC drive.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are retrieved manually or electronically by an individual's name.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Records are retained and disposed of in accordance with NARA's General Records Schedule 2.1, Item 140 (applicants); and General Records Schedule 2.3, Item 20 (employees).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** Paper records are maintained in offices and locked file cabinets. During duty hours, the records are under surveillance of personnel charged with their custody. After duty hours, the offices are accessible only using an office key or access card. Access to electronic records maintained on an OSHRC shared drive is restricted to personnel who require access to perform their official functions.

**RECORD ACCESS PROCEDURES:** Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**CONTESTING RECORD PROCEDURES:** Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on the specific procedures for

contesting the contents of a record, refer to 29 CFR 2400.6 (procedures for amending personal records), and 29 CFR 2400.7 (procedures for appealing).

**NOTIFICATION PROCEDURES:** Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None.

**HISTORY:** None.

**Nadine N. Mancini,**

*Senior Agency Official for Privacy.*

[FR Doc. 2021-25166 Filed: 11/17/2021 8:45 am; Publication Date: 11/18/2021]